

THE HON'BLE Ms. JUSTICE G.ROHINI

WRIT PETITION NO: 22985 of 2006

Dated: 01-12-2006

Between:

Madhav Krishnachary Varakhedkar

..... PETITIONER

AND

State Bank of Hyderabad,
Chikkadapally Branch,
Hyderabad.

.....RESPONDENT

THE HON'BLE Ms. JUSTICE G.ROHINI

WRIT PETITION NO: 22985 of 2006

ORDER:

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This writ petition is filed seeking a declaration that the action of the respondent-Bank in issuing auction notice dated 06-10-2006 in relation to the property situated in Sy.No.15/AA,15/E, 15Part, 16 &17 of Bonguluru village, Ibrahimpatnam Mandal, Ranga Reddy District under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Act') and proposing to conduct the auction on 08-11-2006 is arbitrary and illegal.

The impugned sale notice was primarily questioned on the ground that the mandatory procedure prescribed under Rule 8 of the Security Interest (Enforcement) Rules, 2002 (for short 'the Rules') with regard to service of possession notice on the petitioner has not been complied with. It is also specifically alleged that the possession notice was not published in two leading newspapers one in vernacular language having sufficient circulation in the locality as required under 8 (1) of the Rules.

A counter affidavit has been filed on behalf of the respondents in which, though it is stated that on 29-06-2006 a possession notice was issued under Rule 8(1) of the Rules and the same was acknowledged by the petitioner on 12-07-2006, the allegation that the possession notice was not published in leading news papers as required under Rule 8(1) of the Rules has not been disputed. However it is contended that the sale notice was published in the newspapers.

I have heard the learned counsel for both the parties. Since admittedly the notice under Section 13(4) of the Act has not been published in the news papers, the subsequent sale notice is vitiated and cannot be acted upon.

Though the learned counsel appearing for the respondent-Bank contended that an alternative remedy is available to the petitioner under Section 17 of the Act, having regard to the admitted facts which rendered the impugned sale notice *ex facie* illegal, it cannot be held that the petitioner is not entitled to the relief under Article 226 of the Constitution of India.

It is relevant to note that in compliance of the interim order passed by this Court, granting stay of auction subject to depositing 25% of the reserve price, the learned counsel for the petitioner states that the petitioner has deposited a sum of Rs.45,50,000/- with the respondents by way of demand drafts. The learned counsel for the petitioner further represented that the petitioner is ready and willing to pay the remaining balance also, if reasonable time is granted.

It is left open to the petitioner to make a representation before the first respondent for settlement of the loan account in which event, the same shall be considered by the respondents and appropriate decision be taken in accordance with law.

Accordingly, the impugned sale notice is set aside and the writ petition is disposed of with the above observations. No costs.

G. ROHINI, J

Dated: 01-12-2006

Note: Issue C.C. in one week..

B/o
KLP

